

MINTZ LEVIN

Michael H. Pryor | 202 434 7365 | mpryor@mintz.com

701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202-434-7300
202-434-7400 fax
www.mintz.com

February 12, 2010

Via Hand-Delivery

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, S.W.
Room TW-A325
Washington, DC 20554

FILED/ACCEPTED
FEB 12 2010
Federal Communications Commission
Office of the Secretary

Re: REDACTED -- FOR PUBLIC INSPECTION

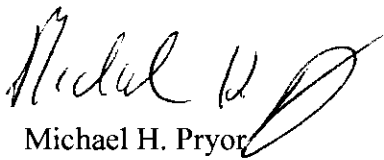
Dear Secretary Dortch:

Enclosed please find two copies of a REDACTED document being filed in WT Docket No. 09-104 on behalf of Cox Communications.

Also enclosed is an additional copy of the REDACTED document. Please date-stamp the additional copy and return it in the envelope provided.

If there are any questions relating to this application, please contact me at any time.

Sincerely,



Michael H. Pryor
Counsel for Cox Communications

cc: Kathy Harris, Mobility Division, Wireless Telecommunications Bureau

No. of Copies rec'd 0+1
List ABCDE

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

BOSTON | WASHINGTON | NEW YORK | STAMFORD | LOS ANGELES | PALO ALTO | SAN DIEGO | LONDON

MINTZ LEVIN

Michael H. Pryor | 202 434 7365 | mhpryor@mintz.com

701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202-434-7300
202-434-7400 fax
www.mintz.com

PUBLIC VERSION

February 12, 2010

Via ECFS and Hand Delivery

FILED/ACCEP

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

FEB 12 2010

Federal Communications Commission
Office of the Secretary

Attention: Wireless Telecommunications Bureau

Re: **Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless
for Consent to Assign or Transfer Control of Licenses and Authorizations
and to Modify a Spectrum Leasing Arrangement, WT Docket No. 09-104**

Dear Secretary Dortch:

In its reply comments in this proceeding, Cox Communications (“Cox”) expressed its concerns that the sale of ALLTEL’s assets to AT&T would either eliminate Cox’s ability to obtain roaming or vastly diminish its roaming options in the divested cellular market areas (“CMAs”).^{1/} As the Commission has recognized, roaming is critically important to consumers.^{2/} To mitigate this harm, Cox proposed two conditions: (1) in any area where AT&T’s conversion of ALLTEL’s CDMA network to the GSM air interface would eliminate any ability to obtain CDMA roaming, AT&T should be required to maintain ALLTEL’s CDMA network for a time

^{1/} Reply Comments of Cox Communications, WT Docket No. 09-104, at 1-6 (filed Aug. 6, 2009) (“Cox Comments”).

^{2/} See *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817, ¶ 27 (2007) (recognizing that “most wireless customers expect to roam automatically on other carriers’ networks when they are out of their home service area” and that “automatic roaming benefits mobile telephony subscribers by promoting seamless CMRS service around the country, and reducing inconsistent coverage and service qualities.”); see also *Application AT&T Wireless Services, Inc. and Cingular Wireless Corporation, For Consent to Transfer Control of Licenses and Authorizations*, 19 FCC Rcd 21522, ¶ 125 (2004) (noting that the “breadth of a carrier’s geographic coverage is important for consumers who intend to use their phone while traveling.”).

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

BOSTON | WASHINGTON | NEW YORK | STAMFORD | LOS ANGELES | PALO ALTO | SAN DIEGO | LONDON

PUBLIC VERSION

certain; and (2) where, as a result of the transaction, Verizon Wireless (“Verizon”) would be the sole CDMA roaming option, Verizon should allow Cox and other providers to opt into an existing ALLTEL or Verizon roaming agreement.

On November 19, 2009, the Wireless Telecommunications Bureau asked Verizon to respond to Cox’s proposed “opt in” condition.^{3/} This letter addresses Verizon’s response.^{4/} Additionally, Cox responds to several questions raised by Commission staff during the ex parte meetings held on January 28, 2010.^{5/}

Basis for Cox’s Proposed Condition

As a condition of Verizon’s acquisition of ALLTEL, the FCC required Verizon to divest licenses and assets, in fact entire operating units, of either Verizon or ALLTEL in 105 markets.^{6/} The FCC declined to impose conditions on the divestiture in its *Merger Order* stating that questions regarding the qualifications of entities acquiring the divested assets, and whether any particular divestiture would be in the public interest, would be addressed “when an application is filed seeking the Commission’s consent to the transfer or assignment” of the divested assets.^{7/} Verizon and AT&T filed such an application, proposing to transfer licenses and sell divested assets to AT&T in 79 of the 105 markets.

As explained in its reply comments in this proceeding, Cox is a new entrant into the wireless marketplace. It intends to provide wireless service to its widespread customer base utilizing the CDMA air interface beginning this year and it needs reasonable CDMA roaming agreements, including in the divested markets.^{8/} As a new entrant, Cox does not have existing

^{3/} See Letter to Michael P. Goggin, AT&T Mobility LLC and Michael Samscock, Verizon Wireless, from Ruth Milkman, Chief, Wireless Telecommunications Bureau, WT Docket No. 09-104 (dated Nov. 19, 2009) (“Bureau Information Request”). The Bureau asked Verizon to “respond to the request by Cox Communications on page 9 of its reply comments that the Commission ‘permit potential roaming partners to opt into any Verizon Wireless or ALLTEL CDMA roaming agreement for any area where Verizon Wireless is the sole CDMA roaming option.’” *Id.* at 10.

^{4/} Verizon filed a public, redacted response to the Bureau’s request on December 18, 2009, including objections to Cox’s proposed CDMA roaming condition and urging its summary dismissal.

^{5/} See Letter to Marlene H. Dortch, Secretary, FCC, from Michael H. Pryor, Counsel to Cox Communications, WT Docket No. 09-104 (filed Jan. 29, 2010) (“Cox Communications Ex Parte”).

^{6/} *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Red 17444, ¶ 157 (2008) (“*Merger Order*”).

^{7/} *Merger Order* ¶ 162.

^{8/} Cox Comments at 3-4.

PUBLIC VERSION

roaming agreements with ALLTEL or Verizon. Accordingly, the roaming conditions imposed as part of Verizon's acquisition of ALLTEL, which were limited to existing agreements, are of no help.

Verizon and ALLTEL were potential CDMA roaming partners in the divested markets. AT&T, however, utilizes the GSM air interface and thus is not a viable roaming partner for Cox and other CDMA operators in the divested markets if it does not continue to operate the divested CDMA network. In its response to the Bureau's information request, AT&T concedes that Verizon will be the only CDMA roaming option in 15 of the divested CMAs. Indeed, as a practical matter, Verizon will be the only roaming option in virtually all of the CMAs, notwithstanding the applicants' contentions that other alternatives exist.^{9/} And, as Sprint pointed out, there will be areas where there will be no ability for CDMA roaming at all if AT&T shuts down the CDMA network.^{10/}

Cox has proposed narrowly targeted, pro-competitive conditions that would address these transaction-specific concerns. In any area where AT&T's failure to operate a CDMA network would result in no CDMA availability, Cox proposes that AT&T continue operating the divested CDMA assets for a period of five years from the close of the transaction or until a next generation LTE network is deployed both by Cox and by carriers in the divested areas, whichever occurs first. Where, as a result of the divestiture to AT&T, Verizon is left as the only CDMA alternative, Cox proposes that Verizon permit carriers that do not have existing Verizon or ALLTEL roaming agreements to opt into any existing Verizon or ALLTEL roaming agreement. In an effort to limit its relief, Cox requested that the conditions apply to 57 of the to-be-divested markets that were of particular concern.^{11/} These are markets in which the consequences from the lack of CDMA roaming options would be most problematic and that are of particular geographic importance in light of Cox's planned roll out of services.

Verizon's Objections to Cox's Proposed Opt-In Condition Are Without Merit

Verizon raises several meritless objections to Cox's proposed condition to require it to allow wireless providers to opt into any existing Verizon or ALLTEL roaming agreement for areas where, as a result of the divestiture to AT&T, Verizon would be the only CDMA alternative. Verizon claims that Cox's roaming concerns and proposed condition should be

^{9/} Partial Response of AT&T to General Information Request Dated November 19, 2009, WT Docket No. 09-104, at 7-12 (filed Dec. 3, 2009) (responding to Question III.3). The fifteen CMAs are: 289, 297, 298, 299, 523, 532, 583, 634, 635, 638, 639, 640, 718, 719 and 722 ("Partial Response of AT&T").

^{10/} Comments of Sprint Nextel Corp., WT Docket No. 09-104, at 3 (filed July 20, 2009) ("Sprint Comments").

^{11/} Cox Comments at 7, Exhibit A.

PUBLIC VERSION

summarily dismissed because they should have been raised during the ALLTEL merger proceeding, and that Cox is barred from raising them now. To the contrary, Cox is complying with the Commission's directive to raise concerns regarding the specific divestitures when the transaction is submitted to Commission for approval.

As noted above, the FCC expressly deferred questions regarding the soundness of any specific divestiture until an application was filed. In rejecting any proposed conditions on the Divestiture Assets during consideration of the ALLTEL transaction the FCC stated: "We remind commenters that the qualifications of the entity(ies) acquiring the Divestiture Assets and whether the specific transaction is in the public interest will be evaluated when an application is filed seeking the Commission's consent to the transfer or assignment of the Divestiture Assets."^{12/} Verizon and AT&T have now filed an application seeking consent to transfer the assets to AT&T and Cox has every right to question whether this transaction is in the public interest in light of its effect on CDMA roaming.

Verizon next makes the peculiar argument that Cox's proposal is unrelated to this transaction because it would impose new roaming obligations in markets not affected by the divestiture. To the contrary, Cox's concerns and its proposed remedy are directly related to this transaction. The proposed condition only applies in any market where, as a result of this divestiture and AT&T's refusal to maintain the divested CDMA network, Verizon will be the only CDMA roaming option. Cox specifically identified 57 out of the 79 divested markets that were of particular concern and in which the pre-requisites for the condition may apply.

Indeed, AT&T has conceded that Verizon Wireless will be the only operating CDMA alternative in 15 of the CMAs.^{13/} Each of these 15 CMAs was also identified by Cox in its comments. Cox's analysis of the purported additional roaming alternatives identified by AT&T demonstrates that Verizon will in fact be the only effective CDMA roaming option in the remaining CMAs targeted by Cox. For example, in 24 of those CMAs, only Sprint is identified as an alternative to Verizon,^{14/} but Sprint itself has expressed significant concerns about its ability to roam in these areas and, contrary to AT&T's assertion, Sprint does not even operate a network in a number of those CMAs.^{15/} Where additional carriers besides Sprint and Verizon are identified, they are small carriers that have limited coverage or do not have networks upgraded to 3G EVDO as required by Cox and as would have been available through ALLTEL.^{16/}

^{12/} *Merger Order* ¶ 162.

^{13/} See Partial Response of AT&T, *supra* note 8.

^{14/} *Id.*

^{15/} Cox Communications Ex Parte at slides 7-9.

^{16/} *Id.* at slides 5-6.

PUBLIC VERSION

Finally, Verizon argues that even if the condition applies to markets involved in this transaction, the proposed divestiture cannot raise competitive concerns because Verizon's situation will be the same after the transaction as before. This is sophistry. Verizon is proposing to divest CDMA assets to AT&T, a GSM provider. Post divestiture, the number of CDMA alternatives in these markets will be reduced by one if AT&T refuses to maintain a CDMA network. As a result, wireless providers like Cox that must obtain reasonable roaming agreements will be at a substantial competitive disadvantage. Cox either will be unable to obtain CDMA roaming in the divested CMAs (because in some areas there will be no CDMA carriers at all) or will have no bargaining leverage to obtain a reasonable agreement (because Verizon will be the only CDMA carrier available and will have little incentive to strike a reasonable deal with Cox).

Verizon and AT&T's application to divest these assets to AT&T very much raises competitive concerns and Verizon proffers no basis for the summary dismissal of Cox's proposed remedy.

Response to Staff Questions

On January 28, 2010, Cox representatives and the undersigned counsel met with various members of the Wireless Bureau and the General Counsel's office.^{17/} During those meetings, staff raised several questions and asked Cox to respond on the record. Cox's responses follow.

1. Opt-in Agreements

Staff asked for more specific information regarding which types of agreements Cox sought to include in its proposed condition that Verizon Wireless allow potential roaming partners to opt into any Verizon Wireless or ALLTEL CDMA roaming agreement.^{18/} As a new entrant without existing roaming agreements with either Verizon Wireless or ALLTEL, Cox cannot take advantage of the roaming conditions imposed in the *Merger Order*.^{19/} That order imposed a general requirement that Verizon Wireless "honor ALLTEL's existing agreements with other carriers to provide roaming on ALLTEL's CDMA and GSM networks."^{20/} The Commission imposed additional conditions applicable to regional, small and/or rural carriers. For each such carrier that has an existing ALLTEL agreement, Verizon Wireless must maintain the agreement in full force, notwithstanding any change of control or termination for convenience provision in such agreement. Such carriers that have both Verizon Wireless and

^{17/} See Cox Communications Ex Parte.

^{18/} Cox Comments at 7-8.

^{19/} Cox has been seeking to negotiate a roaming agreement with Verizon Wireless for the last five months but Verizon has yet to engage in substantive negotiations.

^{20/} *Merger Order* ¶ 178.

PUBLIC VERSION

ALLTEL agreements may choose which one to govern all roaming traffic, and Verizon Wireless cannot increase rates set forth in ALLTEL's existing agreements for the full term of the agreement or for four years, whichever occurs later. As noted by Verizon Wireless, these conditions allowed regional and smaller roaming partners the ability to "voluntarily elect more favorable terms."^{21/}

Even when fully deployed, Cox only intends to provide wireless service to its cable and broadband customers, and those customers are located in a limited number of markets across the country. Cox's position in the market thus is akin to that of a regional provider. Cox would therefore seek to opt into an existing agreement between a regional or smaller carrier and Verizon Wireless or ALLTEL, including an agreement that provides for both voice and data roaming. Without such a condition Verizon Wireless, which will be the sole CDMA/EVDO roaming option in much of the divested territory, would be able to hamper or limit market entry or impose unreasonable terms and conditions.

2. Basis for Requiring AT&T to Continue a CDMA Network

Under the circumstances of this proposed transaction, Cox's proposed condition that AT&T continue to operate ALLTEL's divested CDMA network in order to retain any CDMA roaming option is fully warranted and consistent with Commission precedent. The staff asked Cox to: identify areas where there would be no CDMA roaming option at all if AT&T shut down the CDMA network; explain the basis for Cox's request that AT&T continue to operate a CDMA network for a period of five years or until a next-generation LTE network has been deployed by Cox and by AT&T or other carriers in the divested markets, whichever is earlier; and address whether such a requirement would be consistent with Commission precedent. The questions are addressed in turn. To the extent the confidential information is utilized in this response, the text will be redacted in the public filing.

A. Areas With No CDMA Roaming Post-Divestiture

Sprint's comments in this proceeding state that closing ALLTEL's CDMA network will eliminate all CDMA coverage in approximately 32 percent of the total square mileage that ALLTEL originally covered with the 79 CMAs to be divested.^{22/} Sprint included a map indicating areas where there would be no CDMA coverage.^{23/} AT&T did not specifically

^{21/} *Joint Opposition of Atlantis Holdings, LLC and Cellco Partnership d/b/a Verizon Wireless to Petitions to Deny and Comments*, at 54, WT Docket No. 08-95 (filed Aug. 19, 2008).

^{22/} Sprint Comments at 10-11.

^{23/} Sprint Comments at Exhibit A.

PUBLIC VERSION

address this contention in its opposition, arguing instead that imposing a requirement to maintain the CDMA network would be contrary to Commission precedent and policy.^{24/}

AT&T's confidential response to question III.1. of the Bureau's November 19, 2009 Letter further addressed this issue. AT&T's response, *****START CONFIDENTIAL**

END CONFIDENTIAL***^{25/}

To the extent that there remain issues of fact regarding areas that may have no roaming alternative, the proper course would be to remit the matter for a hearing.^{26/}

^{24/} Reply Comments of Sprint Nextel Corporation, WT Docket No. 09-104 at 3 (filed Aug. 6, 2009) ("As Sprint explained, but AT&T failed to acknowledge, if AT&T dismantles the CDMA network in the divested territory, AT&T will eliminate all CDMA coverage in over 131,000 square miles of that area."); *Joint Opposition of AT&T Inc. and Verizon Wireless to Petitions to Deny or to Condition Consent and Reply to Comments*, at 11, WT Docket No. 09-104 (filed July 30, 2009) ("*Joint Opposition*").

^{25/} AT&T states in its highly confidential Second Partial response of AT&T Inc. to General Information Request Dated November 19, 2009, that *****START HIGHLY CONFIDENTIAL**

*****END HIGHLY CONFIDENTIAL.**

^{26/} 47 U.S.C. § 309(e).

PUBLIC VERSION

B. Requiring AT&T to Operate a CDMA Network for An Extended Period of Time is Appropriate in this Case

AT&T and Verizon argue that the Commission normally rejects conditions that attempt to preserve a network or particular technology for a particular time and that there is “no basis to depart from that precedent here.”^{27/} The Commission’s recent order in *AT&T/Centennial* merger demonstrates, however, that the Commission will require the maintenance of a network where circumstances of the transaction warrant.^{28/} In that transaction, Sprint had argued that it would be harmed by the elimination of the CDMA network post-transaction and asked the FCC to require “AT&T to support CDMA roaming in Puerto Rico . . . for a period of at least 18 months from the date the transaction closes” in order to allow Sprint time to implement any roaming arrangements that may be necessary.^{29/} The Commission recognized Sprint’s concern and conditioned its approval of the transaction on “AT&T’s commitment to *operate and maintain a CDMA network* in Puerto Rico and the U.S. Virgin Islands for 18 months after the Merger Closing Date.”^{30/} It stated that the transition period whereby AT&T would maintain the CDMA network would “allow carriers using Centennial’s CDMA network sufficient time to implement alternatives.”^{31/}

The Commission thus clearly recognizes that the circumstances of a transaction may warrant a requirement to maintain a particular network technology in order to preserve roaming options.^{32/} The circumstances in this case are worse than those facing the Commission in the *AT&T/Centennial* transaction and thus warrant not only imposition of the same kind of condition, but for a longer period of time. Unlike the situation in this case, the *AT&T/Centennial* Order nowhere suggests that roaming would be eliminated completely without AT&T maintaining the CDMA network in Puerto Rico.^{33/} The justification for maintaining the divested CDMA network is more apparent here, where all ability for CDMA roaming would be

^{27/} *Joint Opposition* at 11.

^{28/} *Applications of AT&T Inc. and Centennial Communications Corp. for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements*, Memorandum and Order, FCC 09-97 (rel. Nov. 9, 2009) (“*AT&T/Centennial Order*”).

^{29/} *Id.* ¶ 137.

^{30/} *Id.* ¶ 138 (emphasis added).

^{31/} *Id.*

^{32/} *AT&T/Centennial Order* ¶ 130 (rejecting a request that AT&T honor agreements for seven years, concluding instead that “given the circumstances of this transaction, a period of four years ensured sufficient time, if necessary, for small carriers to resolve any roaming-related issues created specifically by this transaction.”).

^{33/} *Id.* ¶ 136 (noting that, according to the Applicants, three other facilities-based CDMA providers provided service in each Puerto Rico CMA, except one).

PUBLIC VERSION

jeopardized in portions of the divested CMAs, than in the Puerto Rico situation, where other roaming options existed. Moreover, in the Puerto Rico case, the Commission determined that 18 months was sufficient time to allow CDMA roaming partners time to implement alternatives.^{34/} The Commission noted that Sprint stated that it could build out its own CDMA network in the affected areas within that time frame.^{35/} By contrast, Sprint in this transaction has stated that it cannot economically build in the rural areas that would lose CDMA service.^{36/}

Cox's proposal to maintain the CDMA network for a five year period (or when LTE is deployed) is imminently reasonable when compared with the length of various types of conditions that the Commission has imposed in other cases.^{37/} The *AT&T/Centennial* transaction is again highly instructive. There, the Commission required AT&T to honor existing roaming agreements in the mainland areas for a period of four years. These were areas where AT&T used the same technology as the acquired entity, Centennial "so there is no danger that AT&T will abandon Centennial's GSM network."^{38/} The four-year period was adopted despite the fact that the effects on roaming in the Centennial case are far less severe than in this transaction. In arguing against imposition of roaming conditions in the *AT&T/Centennial* acquisition, AT&T contrasted the situation in the *Verizon/ALLTEL* merger:

The Applicants further assert that the circumstances in the Verizon-ALLTEL transaction, which was conditioned upon roaming commitments by Verizon Wireless, could not be more different than the circumstances in the proposed transaction. For example, the Applicants state that Centennial's licensed service area covers only about 1/25th the area that ALLTEL covered, is much more densely populated, and is almost ubiquitously served by national carriers, which are Centennial's principal competitors and provide alternative roaming partners. In addition, the Applicants contend that in contrast to the Verizon-ALLTEL transaction, where many regional, small, and rural carriers were heavily dependent upon ALLTEL for roaming services, many of the regional, small and rural carriers that operate in

^{34/} *Id.* ¶ 138.

^{35/} *Id.* n.445.

^{36/} Sprint Comments at 13-14 (noting lack of population density and lack of universal service assistance that enabled ALLTEL to build in these areas in the first place).

^{37/} Sprint proposed that AT&T be required "to continue to operate and maintain the divested CDMA network in the 79 CMAs" until "the Verizon Wireless/ALLTEL roaming conditions expire or for a period of at least three years from the date AT&T's proposed transaction closes, whichever occurs first." Sprint Comments at 18-19. The Verizon Wireless/ALLTEL roaming conditions extend for up to four years following the closing of that transaction. *Merger Order* ¶ 178.

^{38/} *AT&T/Centennial Order* ¶ 125.

PUBLIC VERSION

Centennial's service area do not use the same technology as Centennial and thus do not roam with Centennial. According to the Applicants, whereas ALLTEL and its predecessors had made roaming a major focus of their business, the provision of roaming is a small part of Centennial's business and accounts for less than seven percent of its revenues.^{39/}

The Commission, moreover, noted that the economic conditions in the Centennial markets made it likely that other carriers would build out. It noted the "relatively high population density of Centennial's licensed service area (over 105 persons per square mile)."^{40/} In contrast the average population density in the 79 CMAs being divested in this transaction is about 27 persons per square mile.^{41/} It is thus highly unlikely, as Sprint points out, that other carriers will build a CDMA network in this area anytime in the near future, particularly with the specter of a new air interface, LTE, already in advanced stages of testing and deployment planning.

Verizon's and AT&T's reliance on the cases where the FCC has refused to require maintaining a particular network or technology as a condition to a transaction are inapposite.^{42/} In none of those cases was the Commission directly confronted with the complete elimination of an air interface relied upon by other carriers. In the *Verizon/ALLTEL* transaction,^{43/} for example, the FCC refused requests to impose a requirement on Verizon to maintain ALLTEL's GSM network for a period of time. Verizon, however, had agreed to operate ALLTEL's GSM network indefinitely, rendering the need for a condition less critical. Similarly, in the *Verizon/RCC* transaction, Verizon committed to provide "GSM service [in certain portions of Vermont] . . . until a GSM provider is operational and offering service in [that] area. Therefore, post-transaction, there would be at least one GSM competitor providing mobile telephone service if Verizon Wireless ceases to operate the GSM network acquired from RCC."^{44/} Accordingly, the voluntary commitment assured the Commission that GSM service would continue to be available to affected consumers.

^{39/} *Id.* ¶ 124 (citations omitted)

^{40/} *Id.* ¶ 130.

^{41/} Sprint comments at 13.

^{42/} *Verizon/AT&T Joint Opposition*, at 11, n.39.

^{43/} *Merger Order* ¶ 178. Although the immediate transaction at issue stems from the Verizon/ALLTEL transaction, it was not apparent during those merger proceedings that the divestiture would result in the complete elimination of the CDMA network in certain CMAs.

^{44/} *Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corp.*, 23 FCC Rcd 12463, ¶ 86 (2008).

PUBLIC VERSION

Such commitments do not exist here. Unlike the *Verizon/ALLTEL* transaction and the *Verizon/RCC* transaction, there has been no commitment by AT&T to maintain the CDMA network and there will thus be no CDMA network at all in certain areas in the absence of a condition. The Commission here is confronted with an unprecedented situation where, as a result of a transaction, an entire category of service relied upon by competitors will be wholly eliminated. The Commission should ensure that this transaction is in the public interest, by requiring, as it did in the *AT&T/Centennial* transaction, that the acquiring entity maintain and operate a network vital to roaming, and, under the circumstances of this case, for a period of five years or when LTE is deployed, whichever comes first.

The five-year timeframe constitutes a reasonable, but minimum period required for the deployment of alternative roaming options, particularly LTE. Once LTE is deployed by Cox and by carriers within these divested CMAs, the problem of disparate air interfaces will be resolved and roaming options will develop. Cox has already begun testing LTE for its network and it fully anticipates that it will be utilizing LTE for its wireless network. Moreover, LTE deployment is expected to accelerate as carriers begin to build out their 700 MHz licenses over the four- to eight-year build out requirement for this spectrum. Once LTE capable of providing voice and data roaming has been deployed in these areas, Cox will have roaming alternatives and AT&T would no longer have to continue operating ALLTEL's CDMA/EVDO network.

For all of these reasons, the circumstances of this case fully warrant that a requirement to continue operating the divested network for a period of five years, or when LTE is deployed, is perfectly reasonable.

Respectfully submitted,

/s/ Michael H. Pryor

Michael H. Pryor
Counsel to Cox Communications

cc: Kathy Harris (confidential version, by hand delivery)
Nancy Victory (confidential version, by overnight delivery)
Peter J. Schildkraut (confidential version, by overnight delivery)